Chapter 162-32 WAC

SEXUAL ORIENTATION AND GENDER IDENTITY

NEW SECTION

WAC 162-32-010 General purpose and scope. This chapter interprets and implements the sexual orientation and gender expression and gender identity discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215 and provides guidance regarding certain specific forms of sexual orientation and gender expression and gender identity discrimination.

NEW SECTION

WAC 162-32-020 Leave policies and reasonable accommodation. (1) **Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's gender expression or gender identity in the same manner as requests for all other medical conditions. For example:

(a) If an employer provides paid sick leave for periods of disability that require medical leave, the employer must provide paid sick leave for periods of disability related to an individual's gender expression or gender identity that require medical leave;

(b) If the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation when the disabling condition is related to the individual's gender expression or gender identity, however, an employer may not inquire if the leave is related to gender expression or gender identity or gender transition, nor can the employer require that the note specify if the leave is related to gender expression or gender identity or gender transition;

(c) If the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's gender expression or gender identity;

(d) If an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's gender expression or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's gender expression or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities related to gender expression or gender identity shall be analyzed in the same manner as with accommodations for any other disability. To the extent consistent with personal medical information connected to other disabilities, personal medical information connected to disabilities related to a person's gender expression or gender identity must be kept confidential.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender expression or gender identity itself is a disabling condition.

NEW SECTION

WAC 162-32-030 Employee benefits and privileges. (1) **Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation or gender expression or gender identity. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's opposite/different sex spouse but to fail to provide health insurance cov-

erage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b) Provide parental leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same parental leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation or gender expression or gender identity. If the benefit or privilege is extended to the employee's opposite/different sex spouse, it must be extended to an employee's same sex spouse as well.

NEW SECTION

WAC 162-32-040 Harassment. (1) **Harassment.** Harassment based on an individual's sexual orientation or gender expression or gender identity is prohibited. Sexual orientation or gender expression or gender identity harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender expression or gender identity, and can be imputed to the employer.

(2) **Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) Asking unwelcome personal questions about an individual's sexual orientation, gender expression or gender identity, transgender status, or sex assigned at birth;

(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation, gender expression or gender identity, transgender status, or sex assigned at birth against his or her wishes;

(c) Using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation or gender expression or gender identity;

(d) The deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on legally mandated documentation, if the individual has not officially obtained a name change);

(e) Posting offensive pictures or sending offensive electronic or other communications;

(f) Unwelcome physical conduct.

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment or harassment based on gender expression or gender identity in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, which occurred because of the individual's sexual orientation or gender expression or gender identity, and can be imputed to the place of public accommodation. In schools, such harassment is offensive and unwelcome behavior serious enough to interfere with a child's access to educational opportunities, which occurred because of the child's sexual orientation or gender expression or gender identity, and can be imputed to the school.

NEW SECTION

WAC 162-32-050 Dress and grooming standards. (1) **Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image.

(2) **Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender expression or gender identity.

NEW SECTION

WAC 162-32-060 Gender-segregated facilities. (1) **Facility use.** All covered entities shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing

rooms, and homeless or emergency shelters, that are consistent with that individual's gender expression or gender identity.

In such facilities where undressing in the presence of others occurs, covered entities shall allow access to and use of a facility consistent with that individual's gender expression or gender identity.

(2) **Cannot require use inconsistent with gender expression or gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender expression or gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender expression or gender identity, the person expressing discomfort should be directed to a separate or gender-neutral facility, if available.

(b) Any action taken against a person who is using a restroom or other gender-segregated facility, such as removing a person, should be taken due to that person's actions or behavior while in the facility, and must be unrelated to gender expression or gender identity. The same standards of conduct and behavior must be consistently applied to all facility users, regardless of gender expression or gender identity.

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.